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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/981,287	DOHRMANN, BERNHARD	
	Examiner	Art Unit	
	Nikolai A. Gishnock	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *14 August 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-4,7,11,12 and 42-78* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7,11,12 and 42-78* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 June 2007* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

In response to Applicant's remarks submitted 8/14/2008, claims 5, 6, 8-10, & 13-41 are cancelled. Claims 1-4, 7, 11, 12, & 42-78 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 42-46, & 49-78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konopka et al. (US 5,850,250), hereinafter known as Konopka, in view of Freiberger et al. (US 6,034,652), hereinafter known as Freiberger.

5. Konopka teaches a computer implemented instructional information delivery system and method (workstation includes a personal computer to schedule classes, 8:40-42) comprising: at least one source that provides data, including an image capture device (front video cabinet with a document camera, 6:61-67), the data comprising instructional information (images of instructional materials are received by the document camera, 6:63-67) and background information (three video monitors for displaying video images of students in remote classrooms, 6:46-50); at least one user interface that receives input from a user (control panel to control all devices located in the room, 8:45-48), the input related to execution of the data (the teacher is able to switch between a rear camera and the document camera to control the display , 7:50-53); a plurality of output devices in a classroom that receives audio and visual components of the data, wherein the plurality of output devices includes at least three visual displays that show at least three visual images (the front audio/video cabinet includes three Video Monitors, each for displaying a video image; 6:46-50; see also Figure 3, Items 201-204) and wherein display of the instructional information is controlled by an operator (teacher's workstation includes a control panel, for controlling audio/video functions, 8:42-50), and at least one processor that generates or routes audio and visual components from the instructional information and background information from provided data to at least one output device (CPU module for controlling audio/video functions, 8:46-48), and a computer-readable medium accessible by the processor and including a set of predetermined rules (personal computer and CODEC machine which converts the digital information from the network into video and audio signals which are then broadcast into the classrooms by monitors for displaying the signals, 3:61-4:3 & 8:38-56,

also 9:33-10:4) comprising instructions for displaying instructional information selected by the operator until a triggering event occurs (teacher's workstation with a control panel, linked to the network and audio/video components in the classroom for presentations, 8:38-56; the teacher is able to switch between devices to control the display, 7:50-53; the switch operation is understood to be a triggering event); and communication links that transmit data and information between the at least one source, the user interface, the processor and the output devices (personal computer is linked to the network and audio video components, 8:42-45) [Claims 1, 59, & 67].

6. What Konopka fails to teach is where the display of the background information is controlled by an auto-switching algorithm, the background images displayed and replaced randomly by the auto-switching algorithm that controls selection, sequence, and duration of the display of the background images after expiration of a predetermined timeout period for displaying the instructional information [Claims 1, 42, 44, 59, & 67]. However, Freiberger teaches where display of background information data (content data, making use of the unused capacity of a display device, and for presenting to a person during inactive periods, 2:3-34; content data includes clips, images, moving or still pictures, text, numerical information, or audio, 6:56-64), distinct from the instructional information (user's primary interaction with the computer; the information is presented in areas of a display screen that are not used by displayed information associated with the primary interaction with the apparatus. The information is embodied as one or more sets of content data, 2:16-21) is controlled by an auto-switching algorithm (A set or sets of instructions for enabling a display device to selectively display an image or images generated from a set of content data are also made available for use by the content display systems. Typically, the instructions enable images generated from content data to be displayed automatically, without user intervention, in a predetermined

manner, thereby enhancing the capability of the invention to occupy the user's peripheral attention, 2:35-3:10); and generating and routing the background information from provided data to output devices (The formulation of a version of a set of content data could depend upon the operating system being used by the computer on which the content display system is implemented or other characteristics of the computer, such as the speed with which the display device can be operated, 16:23-50); and personal computer including instructions for displaying background images of the background information on one or more visual displays not displaying instructional information (a computer readable medium can be encoded with one or more computer programs for enabling a content display system to selectively display on a display device, in an unobtrusive manner that does not distract a person from a primary interaction with an apparatus associated with the display device, an image generated from a set of content data, 4:60-5:10) randomly by the auto-switching algorithm that controls selection, sequence, and duration of the display of the background images (The instructions of the computer program can include: i) acquisition instructions for enabling acquisition of a set of content data from a specified information source, ii) user interface installation instructions for enabling provision of a user interface that allows a person to request the set of content data from the specified information source, iii) content data scheduling instructions for providing temporal constraints on the display of the image or images generated from the set of content data, and iv) display instructions for enabling display of the image or images generated from the set of content data, 4:31-41; it is understood that randomly displaying content is merely a scheduling instruction that can be provided to the attention manager), after expiration of a timeout period (The content data scheduling instructions can specify, for example, the duration of time that the image or images generated from a set of content data can be displayed, an order in which the images generated from a plurality of sets of content data are displayed, a time or times at which the image or

images generated from a set of content data can or cannot be displayed, and/or constraint on the number of times that the image or images generated from a set of content data can be displayed, 4:47-55). The instructions for the attention manager of Freiberger would be used in the instructional display system of Konopka, in order to occupy the user's peripheral attention and to make use of the unused capacity of the display devices. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to display to at least one output device background information from provided content data, controlled by an auto-switching algorithm; the algorithm comprising instructions for displaying background images on displays not displaying instructional information, replaced randomly by the auto-switching algorithm by controlling selection, sequence, and duration of the display of the background images after expiration of a timeout period, in order to present content to provide content to the user during periods when a user is not engaged in intensive interaction {i.e. learning interactions} with the apparatus, in areas of the display not used by displayed information associated with a user's primary interaction {i.e. instruction} with the apparatus, in an unobtrusive manner that does not distract the user from primary interaction with the apparatus [Claims 1, 42, 44, 59, & 67].

7. What Konopka fails to teach is displaying the instructional information in a random pattern on one or more of the visual displays in response to the triggering event, wherein the random pattern comprises displaying the instructional information in a random sequence wherein the instructional information moves from one combination of one or more of the visual displays to another combination of one or more of the visual displays at a random interval, wherein a combination of the one or more visual displays comprises a number of the visual displays less than all of the visual displays [Claims 1, 59, & 67]; displaying random special effect transitions of the background images being displayed on each of the at least three visual

displays [Claim 71], and wherein the auto- switching algorithm replaces displayed background images according to a random duration with random background images [Claim 74]. However, Freiberger teaches instructions for switching time between background images (determining an idle period or idle condition, via an idle timer or apparatus to ascertain a user's attention focus at predefined time intervals, at 8:37-9:43, then generating a display of a set of content data if an idle period is detected, at 9:44-10:42), and instructions for controlling display duration and special effects of the background images (package file can also include information governing the presentation of the set of content data, such as screen position, special animation effects, and display duration, 21:50-54). Freiberger further teaches where the content display system can include instructions for evaluating a Gaussian probability function each time a set of content data in the schedule is presented for display, either displaying the content or not, based on a consideration of a variety of factors (26:52-27:15). This probability display function is understood to be a *random* probability of displaying content. This probability function taught by Freiberger would be evaluated by the content scheduler to control the idle period, display duration, and special animation effects of the content display, as used in the classroom instructional display system of Konopka. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the probability function of Freiberger to implement random switching times, display durations, and special effects of randomly-selected background images taught by Freiberger, in the instructional display system taught by Konopka, in order to optimize the use of the unused capacity of the display device and the viewer's attention [Claims 1, 45, 59, 67, 71, & 74].

8. Konopka teaches wherein said at least one source comprises at least one of VCR (4:24-27), DVD, cameras (3:48-52), audio tuners (microphone mixers, 9:37-41), Internet (data

applications transmitted over T1 lines, 11:22-23) and PC-based presentations (8:42-45) [Claim 2].

9. Konopka teaches wherein said at least one predetermined rule determines order and sequence in which data from each source is to be applied to the output devices (in a normal operating mode, one of the video monitors will display the teacher, while the other monitors will display classroom images, 4:9-14) [Claim 3].

10. Konopka teaches wherein said input from a user determines which source provides data (video image received by the document camera may be selectively displayed on the first video monitor, and the teacher is able to switch between the rear camera and the document camera, 7:43-46) [Claim 4].

11. Konopka teaches wherein the at least one predetermined rule further includes displaying one or more of a student image of a student in the classroom and a teacher image on the display system on one of the at least three visual displays (one of the video monitors will display a video image of the teacher, 4:9-14) [Claim 46].

12. What Konopka further fails to teach is wherein the at least one predetermined rule further includes displaying background pictures during idle or transition periods on the display system on each of the at least three visual displays [Claim 49]. However, Freiberger teaches API instructions for the automatic display of background images on a computer display after detection of an idle period of predetermined duration (3:11-51). The instructions for determining the user's attention to the primary interaction taught by Freiberger would be used in the computer instruction system of Konopka in order to determine the appropriate timing to display background images on the display of Konopka, in order to optimize he user's attention to the instructional information and the background images. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to display background

pictures during idle or transition periods on the display system on each of the at least three visual displays, as taught by Freiberger, on the three visual display devices of the instructional computer display system of Konopka, in order to present content to provide content to the user during periods when a user is not engaged in intensive interaction {i.e. learning interactions} with the apparatus, in areas of the display not used by displayed information associated with a user's primary interaction {i.e. instruction} with the apparatus, in an unobtrusive manner that does not distract the user from primary interaction with the apparatus [Claim 49].

13. Konopka teaches wherein the at least one predetermined rule further includes displaying previous information provided by the operator to reinforce the previous information on each of the at least three visual displays (video image received by the document camera may be selectively displayed on the first video monitor, 7:43-46) [Claim 50].

14. Konopka teaches wherein the at least one predetermined rule further includes displaying new information provided by the operator when the operator overrides the auto-switching algorithm on the display system on each of the at least three visual displays, and providing a speaker override module that is configured to allow the operator to temporarily override display of the background images and to display selected material by the instructor (teacher is able to switch between a rear camera and the document camera to control the display of the first video monitor, 7:50-53) [Claims 51 & 65].

15. Konopka teaches wherein the rules further include displaying background images that are related to the instructional material being taught (video image received by the document camera may be selectively displayed on the first video monitor, 7:43-46) [Claims 52 & 60].

16. Konopka teaches wherein the rules further include displaying background images that are unrelated to the instructional material being taught (three monitors display video images of three remote classrooms, 4:9-14) [Claims 53 & 61].

17. Konopka teaches wherein the unrelated background images are selected from the group of pictures consisting of: animals, forests, rivers, clouds, mountains, art work, people, buildings, vehicles, tools, plants, minerals, geological items, scenic sights, maps, cartoon images, segments of movies, segments of videos, and web site images (three video monitors display a video image of students in a classroom, 6:46-50; the students are inherently people, and the video image inherently a segment of video) [Claims 54 & 62].

18. What Konopka fails to teach is wherein the unrelated background images are selected from the group of pictures consisting of: books, astronomy images, zoology items, biology items, historical items, futuristic information, economical information, financial information, statistical information, science fiction, fiction, scientific information, and theological information [Claims 55 & 63], and wherein the related background images are selected from the group of pictures consisting of: books, astronomy related images, mathematical related images, zoology related items, biology related items, historical related items, futuristic related information, economical related information, financial related information, statistical related information, science fiction related information, fiction related information, scientific related information, and theological related information [Claims 56 & 64]. However, Freiburger teaches where the background content data includes moving and still images of nature scenes, pictures of family members, music video segments, video from a camera monitoring ski slopes or traffic intersections, financial data, such as stock ticker information, or news summaries (7:23-38). The financial data of Freiburger is understood as financial information and financial related information. The background images and video as taught by Freiberger would be displayed by the processor selectively on the display devices of Konopka, for engaging the peripheral attention of the students. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have displayed financial information as the unrelated background

images, as taught by Freiberger, on the three displays in the computer-based instructional system of Konopka, in order to present content to provide content to the user during periods when a user is not engaged in intensive interaction {i.e. learning interactions} with the apparatus, in areas of the display not used by displayed information associated with a user's primary interaction {i.e. instruction} with the apparatus, in an unobtrusive manner that does not distract the user from primary interaction with the apparatus [Claims 55, 56, 63, & 64].

19. Konopka teaches wherein the three visual displays are viewable on a single display screen incorporating at least three separate visual images thereon (the first video monitor displays either a video image of the teacher or instructional material, and is larger than the other monitors, 6:33-44) [Claims 57 & 66].

20. Konopka teaches wherein the three visual displays are viewable on three distinct display screens (three video monitors, each for displaying a video image of students, 6:46-50) [Claim 58].

21. Konopka teaches wherein the user interface includes a screen and an input device (workstation includes a personal computer and control panel to control all devices located in the room, Abstract & 8:42-50) [Claim 68].

22. Konopka teaches wherein the source includes a microphone (student microphones, 9:33-34) [Claim 69].

23. Konopka teaches wherein the computer-readable medium includes instructions for enabling the operator to enter direction regarding image display through the user interface and instructions for carrying out such direction (remote controller, such as a joystick, for controlling the pan, tilt, and zoom system, for aiming and focusing a camera, 4:30-41) [Claim 70].

24. What Konopka further fails to teach is wherein the auto-switching algorithm replaces displayed background images with varying patterns selected with table driven timeouts, and the

auto-switching algorithm randomly moves the instructional information after the triggering event with the table-driven time outs [Claim 72], and wherein the table-driven timeouts preclude duplication of image pattern to a minimum frequency [Claim 73]. However, Freiberger teaches a content display system which stores a display schedule for background images in a database (Once the order and duration of display are established, the sets of content data are repetitively displayed by cycling through the display schedule repeatedly until operation of the attention manager is terminated. The display schedule can also accommodate scheduling parameters that delete sets of content data from the display schedule during particular iterations, thereby, for example, controlling the frequency with which particular sets of content data are displayed. The display schedule can be stored in an appropriately structured database that is stored in a memory of the computer used to implement the content display system, 10:37-50). The database for storing the content data display schedule is understood to be a table, controlling the timeout period after which a particular content image is removed from display or no longer displayed. See also Freiburger, 28:40-29:45. Cycling the display of the content is understood to be moving the instructional information, based on the table-driven time out data. The database of Freiberger for scheduling the display of content taught by Freiberger would be used to automatically switch the background images in the instructional display system of Konopka. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the auto-switching algorithm replace displayed background images with varying patterns selected with table-driven timeouts, where the auto-switching algorithm randomly moves the instructional information after the triggering event with the table-driven time outs, which preclude duplication of image pattern to a minimum frequency, as taught in Freiberger, in the instructional display system of Konopka, in order to record audit or usage

data, indicating the frequency and duration for which the user's attention was directed to each piece of content, for the benefit of the operator or a content distributor [Claims 72 & 73].

25. What Konopka further fails to teach is wherein the auto-switching algorithm selects input sources for the background information supplying the background images [Claim 75]. However, Freiberger teaches an auto-switching algorithm to selectively display images generated from one or more sets of content data (7:7-22; see also content providing systems, 16:17-22). The selection of input sources by the auto-switching algorithm of Freiberger could be programmed into the computer-based instructional system of Konopka. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the auto-switching algorithm of Freiberger to select input sources for the background information, as a feature in the system of Konopka, in order to allow the automatic scheduling of original, updated, and interesting content on the display screen [Claim 75].

26. What Konopka further fails to teach is an operator override for the auto-switching algorithm for one or more visual displays, wherein the triggering event comprises receiving a command from the operator [Claims 43 & 76]. However, Freiberger teaches where an attention manager is activated by explicit direction from the user, such as by an on-screen icon or menu selection (9:30-45). Freiberger further teaches where the attention manager can be terminated if the user makes an input to the computer using an input device (11:42-67). The operator override for the auto-switching algorithm of Freiberger could be programmed into the computer-based instructional system of Konopka. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have the operator override of Freiberger as a feature in the system of Konopka, in order to allow the operator to select the primary interaction when he/she desires to refocus the student's attention manually [Claims 43 & 76].

27. What Konopka further fails to explicitly teach is wherein the auto-switching algorithm [Claim 77] or the operator [Claim 78] changes display of the instructional material from *one set* of the one or more of the at least three visual displays to *another set* of one or more of the at least three visual displays and wherein the auto-switching algorithm moves the background images of the background information to one or more visual displays not displaying instructional information [Claims 77 & 78]. However, Konopka teaches an instructional display device having three or more visual displays (6:46-50; also Figure 3, Items 201-204) and wherein display of the instructional information is controlled by an operator, who moves background images to displays not displaying instructional information (7:50-53). Further, Freiberger teaches the use of an auto-switching algorithm for the display of instructional material (2:35-3:10). Including another set of one or more displays is construed as a mere duplication of parts, which fails to patentably distinguish over Konopka and Freiberger, because the auto-switching algorithm would treat another set of displays merely as more displays. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, for the auto-switching algorithm or the operator to change display of the instructional material from one set of the one or more of the at least three visual displays to another set of one or more of the at least three visual displays, wherein the auto-switching algorithm moves the background images of the background information to one or more visual displays not displaying instructional information, in the system of Konopka, in light of the teachings of Freiburger, in order to provide more displays for additional content on which a student's attention can be further focused [Claims 77 & 78].

28. Claims 7, 11, 12, 47, & 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konopka, in view of Freiberger, as applied to claim 1 above, and further in view of Slezak (US 6,647,119), hereinafter known as Slezak.

29. Konopka and Freiberger teach all the features of claim 1 as demonstrated above. What Konopka and Freiberger fail to expressly teach is wherein each of the three display screens is divided into a plurality of viewing areas in a predetermined pattern [Claim 7], or two or more unequal viewing areas [Claim 11], or a plurality of viewing areas in a pattern different from the other screens [Claim 12], or wherein displaying the instructional information in a random pattern further comprises displaying the instructional information in a random pattern for a predetermined period of time, wherein one of background images and additional instructional information is displayed after the predetermined period of time [Claim 47], or wherein first instructional information is displayed in a random pattern along with second instructional information, wherein the first instructional information is displayed with a first random pattern and a second instructional information is displayed with a second random pattern [Claim 48]. However, Slezak teaches a presentation device that displays some or all of the participants in isolated quadrants of the screen display (Column 6, Lines 48-55) [Claim 7]. Slezak teaches information being of a length that would be adjusted by scroll bars, in which it is inherently unequal to the length of the screen (Column 7, Lines 22-29) [Claim 11]. Slezak also teaches the use of MICROSOFT WINDOWS NT or WINDOWS 95 visual interface, in which a plurality of adjustable windows may be customized on different user's screens (Column 8, Lines 54-57) [Claim 12]. The personal computer based system for controlling instructional displays of Konopka, using an operating system having a screensaver, wallpaper, or background API (Application Programming Interface), as taught by Freiberger (at 8:28-31 & 9:11-21), would have access to the user interface programming elements taught by Slezak. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have adapted the plurality of unequal viewing areas on different screens in a predetermined pattern, or displaying instructional information from multiple sources in randomly chosen patterns, as

taught by Slezak, into the instructional delivery device of Konopka and Freiberger, in order to display separate visual cues relevant to one another to a student on a monitor [Claims 7, 11, 12, 47, & 48].

Response to Arguments

30. Applicant's arguments filed 8/14/2008, see pages 18-22, have been fully considered but they are not persuasive.

31. Applicant states at pages 19-22 that neither Konopka nor Freiburger teach displaying the instructional information randomly after a triggering event where background information is displayed randomly on screens not displaying instructional information, and randomly displaying first and second instructional information and background information for periods of time. However, each of the claimed elements are found in the prior art, as demonstrated above, although not in a single reference. One of ordinary skill in the art could have combined the elements as claimed by known methods and, in that combination, each element would merely have performed the same function as it did separately; and that one of ordinary skill in the art would have recognized that the results of the combination were predictable. In the instant case, the methods and motivations of Freiberger for managing a user's attention span efficiently would have been key to using the combination in the manner set forth. Thus, it is Examiner's position that using combination of Konopka and Freiberger to randomly and varyingly display content on multiple screens is likely to be obvious in view of the applied prior art. Thus, Applicant's argument is not convincing.

32. Applicant further argues at pages 20-21 that Freiburger merely teaches a means for advertising, and fails to teach use of instructional content. However, Freiburger teaches at 7:33-62 that such content may be news summaries, financial data, traffic updates, talk shows, and

other varieties of content. Freiberger is thus understood to teach using instructional and entertainment content. One of ordinary skill in the art would understand news and data to be instructional content. Further , Freiburger is teaches the motivation of refocusing a user's mind away from a primary content to a secondary content and back, at 2:12-28. It is Examiner's position that one of ordinary skill would look to Freiburger for such a teaching; thus, Applicant's arguments are further not convincing.

33. In response to applicant's argument that there is no suggestion to combine the references, see page 21, the Examiner recognizes that obviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Additionally, the Supreme Court has particularly emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," where, "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results," *KSR International Co. v. Teleflex Inc. (KSR),* 550 U.S. ___, 82 USPQ2d at 1385 (2007). The focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention, and on what such a person would have been reasonably expected to have been able to do in view of that knowledge. This is so regardless of whether the source of that knowledge and ability was documentary prior art, general knowledge in the art, or common sense. See MPEP 2142 (Rev. 6, Sept. 2007).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikolai A. Gishnock whose telephone number is (571)272-1420. The examiner can normally be reached on M-F 8:30a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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9/24/2008
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Examiner, Art Unit 3714

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